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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,501	12/04/2001	Glenn Joseph Martyn		4265

7590

02/06/2003

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EXAMINER

OLSZEWSKI, JOAN M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 02/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/945,501

**Applicant(s)**

MARTYN, GLENN JOSEPH

**Examiner**

Joan M. Olszewski

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 1-5 are pending in this application. Applicant's election without traverse of Group I, claim 1 in Paper No. 9 is acknowledged.

Claims 2 and 3 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non elected inventions of Groups II and III, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

#### ***Priority***

Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(e) based upon a provisional application 60/230,046 filed 09/01/2000. A claim for priority under 35 U.S.C. 119(e) cannot be based on said application, since the application 09/945,501 filed on 12/04/2001 was filed more than twelve months thereafter.

#### ***Drawings***

The drawings are objected to because the drawings are too dark and make it difficult to see various features. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "4" on page 5, line 7; "24" on page 6, line 1. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "4a" and "4b". A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the term "said" appears in line 5; in line 7, "which enables animal" should be --which enables animals--; line 8, the phrase "stepping into box, and stairs and box " is confusing and unclear; lines 8-9 the phrase "s separate piece than box" is confusing and unclear. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: on page 2, line 14, the term "our" appears to be inaccurate since only one inventor has been set

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forth; on page 1, line 19 the term "weather" should be --whether--; Figure 10C has no Brief Description in the specification.

Further, the entire specification has numerous spelling and grammatical errors of which a few examples are listed below:

Page 1, line 16 "masters" should be --master's--;

Page 1, line 16 "box's" should be --boxes--;

Page 1, lines 18-19 "usually they don't have a way to provide animals that good look" this is a confusing phrase.

Applicant is required to carefully review the entire specification for additional errors of the types mentioned above and correct all locations of these errors in the specification.

Appropriate correction is required.

The use of the trademark PETSCAPE has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Further, the trademark PETSCAPE has been previously granted as cited in U.S. Patent 5,749,320, column 2, line 6. Therefore, Applicant is not entitled to use this as his invention title.

### ***Claim Objections***

Claims 1 and 5 are objected to because of the following informalities:

Claim 1, the line above claim 1, "A collection of three (3) pet products that each serve as functional utility for animals." and below the "What I Claim As My Invention:" should be deleted. Note that this line has no impact on the claim language.

Appropriate correction is required.

Claim 5 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only; line 2 of claim 5 refers to "claim 1 and claim 4". See MPEP § 608.01(n). Accordingly, claim 5 has not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 4, it is unclear from the claim language whether Applicant is claiming a real tree with real leaves or a simulated tree with simulated leaves. It is unclear how a "real tree" and a "simulated tree" relate to the "tree" set forth in claim 1. Similarly, with respect to the "real leaves" and the "simulated leaves" it is unclear how these relate to the "leaves" of claim 1. Further, the limitations of having "one or more platforms" in claim 4 is redundant since this limitation has already been set forth in claim

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1. The last line of claim 4 is confusing since "tree bark" would only be found on a real tree.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by a natural real tree and further as best understood in light of the 35 U.S.C. 112 second paragraph rejections above.

Regarding Claims 1 and 4, a natural and living real tree would have a trunk, with bark which would act as a scratching post, leaves and branches. The branches would also be considered platforms that the cats could perch on. Examiner takes official notice that a natural living tree meets all the limitations of the claims.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wade.

Re- Claim 1, Wade discloses a cat scratching post comprised of a tree capable of being used as a resting area and a scratching post having leaves and a platform at the base which would allow cats to perch on (Figure 1).

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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Crow ( 3,479,990), Lichtenberger (3,479,991), Salerno (3,604,397), Marks (3,616,105), Michlap et al. (D224,686), Osment (4,202,922), Kaplan (4,253,423), Weixelman (D262,097), Bond (4,359,737), Rademacher (4,859,510), Pierrot (5,002,012), Hatten et al. (5,067,440), Healey (5,184,568), Johnson (5,221,565), O'Rourke et al. (D348,124), Curitti (5,340,622), Thomas et al. (D361,647), Jarboe (5,679,189), Horton et al. (5,722,874), Chang (6,030,670), Arriola (6,056,623), Lee et al. (6,117,503), DeRaspe-Bolles et al. (2002/0179021 A1), Biermann et al. (6,490,997), Klever (DE 3903473 A1), Okamoto et al. (JP 04146203 A), Sawatzki (DE 4439855 A1), LALA (WO 96/26661 A1), Shinbou (JP 08325820 A), Ashizawa (JP 2000094897 A), Motimoto (JP 2000032636 A), (DE 20115866 U), and Pippirs (DE 19910992 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

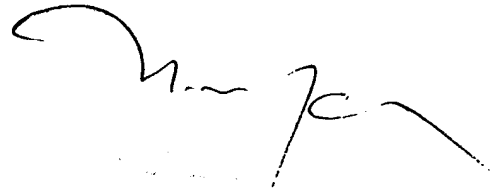


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Joan M. Olszewski  
Examiner  
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JMO  
February 4, 2003

A handwritten signature in black ink, appearing to read 'Joan M. Olszewski', with a stylized flourish at the end.